

REMARKS/ARGUMENTS

Claim 46 has been canceled. Applicants do reserve the right to file a divisional or a continuation application directed towards the canceled subject matter of canceled claims. Claim 47 has been amended by inserting the limitations from former claim 46 and by amending the definition of m as being the integer 1. Claims 48 - 50 have been amended by changing the dependency from Claim 46 (now canceled) to Claim 47. Claims 51 - 53 have been canceled. Claims 54 and 55 have been amended by changing the dependency from Claim 46 (now canceled) to Claim 47. Claim 56 has been amended by changing the dependency from Claim 46 (now canceled) to Claim 47 and inserting the definition of Q. Claim 57 has been canceled. Claim 58 has been amended by changing the dependency from claim 57 that has been canceled to claim 49. Claim 59 has been amended by changing the dependency from Claim 46 (now canceled) to Claim 47. Claim 63 has been amended by changing the dependency from Claim 46 (now canceled) to Claim 47.

CLAIM REJECTIONS – 35 USC § 112

In the Office Action Claims 46 – 67 were rejected under 35 USC § 112, second paragraph, as being allegedly indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicants submit that in view of the amendment made the basis for all Section 112 rejections have been obviated. The recitation of “and its N-oxide, pharmaceutically acceptable addition salts, isomeric forms” has been amended to recite the terms in the alternative. The definition of Q has been entered into claim 56. Accordingly, Applicants request that the rejection under 35 USC § 112, second paragraph, be withdrawn.

In the Office Action Claims 46-67 were rejected under 35 USC § 112, first paragraph, as allegedly failing to comply with the written description requirement. Applicants have deleted the recitation of “with the proviso that both m and n cannot be 0” because said recitation introduced new matter. Applicants submit that the recitation that was the basis for the rejection has been deleted from the

claims. Accordingly, Applicants request that the rejection under 35 USC § 112, first paragraph be withdrawn.

THE REJECTION UNDER 35 USC § 103

In the Office Action Claims 46 – 47 are rejected under 35 USC § 103 (a) allegedly being unpatentable over Nagamatsu et al. JP 09255681. Applicants submit that in view of the amendments to the claims the overlap between the disclosure of JP 09255681 and the presently claimed subject matter has been removed and the presently claimed structures are structurally sufficiently remote to be unobvious to a person of ordinary skill in the art because there needs to be a substituent R⁴ as well as R⁵ of a particular selection on the phenyl ring. Accordingly Applicants request that the rejection under USC § 103 over Nagamatsu et al JP 09255681 be withdrawn.

THE REJECTION UNDER 35 USC § 102(b)

The Office Action alleges anticipation in a paragraph under the heading “Claim Rejections – 35 USC §103”. More specifically on page 5, line 13 – 18, the Office Action alleges anticipation of claims 46-67 over Nagamatsu et al. JP 07041479. Applicants submit that the present amendments obviate the grounds for rejection under 35 U.S.C. § 102(b). Particularly, Applicants refer to the fact that m is now defined as 1 and hence cannot be 0 any more. This takes away any overlap that might have existed between the disclosed subject matter and the presently claimed subject matter. Accordingly, Applicants request that the rejection under 35 U.S.C. § 102(b) over Nagamatsu et al. JP 07041479 be withdrawn.

It is requested that the amendment be entered and that the Examiner reconsider the rejection in view of the amendment and remarks and that the case be passed to issue.

No additional fees are believed due. However, the Commissioner is hereby authorized to charge any additional fees or deficiencies due or credit any overpayment to Deposit Account No. 10-0750/JAB1701USWO/AGK.

Respectfully submitted,

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